

## **Tennessee Department of Mental Health and Developmental Disabilities Forensic Community-Based Services Policy**

Each Community Mental Health Center that is contracted with TDMHDD to provide forensic services is responsible for providing follow-up services to defendants who require those services either following an out patient forensic evaluation or after discharge from an inpatient forensic hospitalization under T.C.A. § 33-7-301(a) or T.C.A. § 33-7-301(b). Regional Mental Health Institutes (RMHI) and Forensic Services Program (FSP) shall provide recommendations to the contracted Community Mental Health Center as indicated by the specific need of the defendant being discharged from an inpatient status.

The responsibilities of the CMHC are defined in four categories as follows:

### Category I

This category applies to defendants who are evaluated on an *outpatient* basis, are found to be *competent* to stand trial and do not require services other than an ongoing assessment of competency until trial.

1. The CMHC must provide follow-up services, as indicated, for those defendants who have been found competent to stand trial and have a mental illness that may affect competency to stand trial. Follow-up services include, but are not limited to, scheduled visits with the defendant to assess his continued competency to stand trial, and to determine his current mental status.
2. Follow-up services must be provided, as determined by the CMHC at the time of the evaluation, utilizing the following priority scale:
  - (a) Level 1- Indicates that the defendant requires follow-up services within 2 (two) weeks from the date of the initial evaluation and at specific time frames until trial.
  - (b) Level 2- Within 1 (one) month from the date of the initial evaluation and at specific time frames until trial.
  - (c) Level 3- Within 2-3 (two-three) months from the date of the initial evaluation and at specific time frames until trial.
  - (d) Level 4- No follow-up services are necessary.
3. Documentation of recommended follow-up services must be present in the summary statement of the evaluation.
4. Any mental health professional may assess the defendant's mental status and request that the certified forensic evaluator to see the defendant, if necessary, because of deterioration in the defendant's mental condition that might affect competency.

### Category II

This category applies to defendants who are evaluated on an outpatient basis, and because of mental illness, require some additional intervention/further assessment by the community mental health center (CMHC) to complete the evaluation.

1. The CMHC must receive authorization from the assigned forensic specialist in the office of Special Services to provide additional intervention to the defendant in order to complete the evaluation on an outpatient basis.
2. Once authorized, the further assessment will be immediately scheduled in order to limit the time that the evaluation results are delayed. These interventions include, but are not limited to:
  - (a) Medication administration or adjustments,
  - (b) Competency training, or
  - (c) Further assessments (i.e., rule out malingering, mental retardation, etc.)
3. The CMHC forensic coordinator must call the Office of Special Services of TDMHDD for pre-authorization for reimbursement for these services. The forensic coordinator will identify which of these services are needed and the rationale for the services. A completed pre-authorization form must be sent to the assigned forensic specialist. (*See attachment A and B*)
4. The forensic specialist will return the form with either approval or justification of denial. Services provided without written authorization will not be reimbursed.
5. The certified forensic evaluator will attempt to complete the evaluation within 4 weeks of the time that the interventions are initiated. If the evaluator remains unable to complete the evaluation on an outpatient basis, the evaluator will make a recommendation to the court that the defendant be referred to the RMHI for further evaluation and treatment.
6. The CMHC will submit documentation of these services with the forensic/juvenile claim form within 45 days of the date the services are provided.

### Category III

This category applies to defendants who are charged with a *misdemeanor*, who have been hospitalized under T.C.A. § 33-7-301(a) or T.C.A. § 33-7-301(b) and require further services to attain competency and/or maintain competency. These are defendants who are either *not committable* or are *no longer committable* to an inpatient facility, but are at risk of becoming committable without continued CMHC services.

1. An RMHI may recommend that competency services (training or maintenance) be provided by the CMHC if the defendant meets the following criteria:
  - charged with a misdemeanor, and
  - is incompetent, but no longer committable to an RMHI, and the RMHI determines that with training, the defendant may become competent to stand trial, or
  - is competent and not committable in an evaluation under T.C.A. § 33-7-301(a), or competent and no longer committable following treatment under T.C.A. § 33-7-301(b); and
  - has a high likelihood of deterioration without continued competency maintenance.
2. The RMHI must notify the Community Mental Health Center of the specific areas in which the defendant needs further training/maintenance and how soon the defendant needs to be seen. This information must be included on the discharge plan and on the pre-authorization form utilizing the following pre-determined priority codes within 48 hours prior to discharge:
  - Level 1 – Defendant to be seen within 2 weeks
  - Level 2 – Defendant to be seen within 1 month

Level 3 – Defendant to be seen within 2-3 months  
Level 4 – No follow-up recommended related to competency and/or mental condition

3. For pre-authorization, the RMHI must fax the following to the assigned forensic specialist in the Office of Special Services and to the CMHC:
  - the letter from the RMHI to the court that includes a recommendation for competency training and/or maintenance, and
  - the required pre-authorization form indicating the requested number of sessions, and
  - the most recent staff conference report.
4. Upon receipt of the above information, the assigned forensic specialist in the Office of Special Services will review the request and:
  - authorize the requested number of sessions;
  - authorize a lesser number of sessions;
  - request that further information be submitted before a decision is made; or
  - deny authorization.
5. The decision will be verbally conveyed to the CMHC, followed by written authorization or justification for the denial within 24 hours of receipt of the information.
6. If service is authorized, the CMHC has the following responsibilities:
  - Schedule the designated staff person to see the defendant within 2 (two) weeks of discharge from the RMHI or as recommended by the referring mental health institute, AND
  - Determine the frequency of these sessions according to the specific needs of the defendant, AND
  - Identify a certified forensic evaluator to conduct the competency training/maintenance or to supervise staff that conducts the competency training/maintenance. The certified forensic evaluator must assess the defendant periodically, but at least once every three months, to determine progress towards competency.
7. The CMHC shall send a written report to the court, copied to the assigned forensic specialist in the Office of Special Services, at a minimum of every 6 (six) months that includes the following:
  - Background information that includes the charges, the date of discharge from inpatient, the current legal status,
  - the defendant's current competency status, or
  - progress towards competency, indicating deficit areas;
  - prospects for recovery;
  - the person's current clinical condition;
  - the estimated time required for relevant kinds of recovery; AND
  - whether there is substantial probability that the person will become competent to stand trial in the foreseeable future.
8. There must be documentation of each session with the defendant in the forensic record and this documentation must be sent to Forensic Services with the monthly billing.
9. Competency sessions may be terminated at the discretion of the CMHC when it has been determined that:
  - the defendant has attained competency and is likely to remain competent until trial; or

- the defendant is unlikely to attain competency even with further training; or
- the defendant has utilized the maximum number of sessions allowed (12 per fiscal year), or
- the defendant's charges have been retired or dismissed.

10. The CMHC shall notify the court and the assigned forensic specialist in the Office of Special Services, in writing, of the decision to terminate and the rationale. Copies of all communications with the court must be copied to TDMHDD, Office of Special Services.

#### Category IV

Defendants charged with a *felony*, have been hospitalized under T.C.A. § 33-7-301(a) or T.C.A. § 33-7-301(b), have been found incompetent to stand trial by the court and are not committable, or are no longer committable, but are at risk of becoming committable.

1. The RMHI treatment team may recommend that a community based service plan under T.C.A. § 33-7-401 be developed upon determining that a defendant is:
  - charged with a felony;
  - incompetent; and
  - not committable following a T.C.A § 33-7-301(a) evaluation or no longer committable under T.C.A. § 33-7-301(b), but at risk of becoming committable.
2. The outpatient provider must be involved in the development of the community-based service plan and agree to provide the recommended services.
3. The plan should include the services that are being recommended and how often the service is to be provided to attain and/or maintain the defendant's competency to stand trial. Services include, but are not limited to, the following:
  - Competency training which focuses on the deficits noted during the inpatient stay,
  - Medication management,
  - Maintenance of competency by reviewing the elements for competency on an as-needed basis,
  - Evaluation of psychiatric symptoms that may affect his/her continued competency.
4. Upon agreement of the plan by the provider and the defendant, the RMHI will attach the plan, to the letter to the court. (T.C.A. § 33-7-402)
5. If the defendant contests the plan, the court shall hold a hearing within seven (7) days of the defendant's disagreement. Any defendant hospitalized under T.C.A. § 33-7-301(a) must be discharged no later than 30 days, and the defendant hospitalized under T.C.A. § 33-7-301(b) and no longer committable may be returned to jail/community pending this hearing. The court shall either approve the submitted plan or approve a court-modified plan to correct the deficiencies found by the court. (T.C.A. § 33-7-403)
6. Upon receipt of an order for competency training/maintenance under T.C.A. § 33-7-401, the CMHC will forward the order, the plan and a request for payment authorization to the assigned forensic specialist in the Office of Special Services, TDMHDD.
7. Upon receipt of the written request from the CMHC, the assigned forensic specialist in the Office of Special Services shall notify the CMHC of approval or

justification of denial. A copy of the approval form shall be maintained in Forensic Services in the office of Special Services and the original shall be forwarded to the CMHC.

8. A certified forensic evaluator must provide services or supervise staff that provides competency training/maintenance. This certified evaluator must assess the defendant periodically, at least once every 3 months, to determine progress towards competency.

9. The CMHC shall send a written report to the court, at a minimum of every 6 (six) months, that documents the following:

- Progress towards the goal of the plan,
- Prospects for recovery,
- The person's current condition,
- The estimated time required for relevant kinds of recovery, and
- Whether there is a substantial probability that the person will become competent to stand trial in the foreseeable future. (T.C.A. § 33-7-404)

10. The CMHC must document each session. (Maximum number of sessions reimbursed 12 per fiscal year).

11. Should the defendant become non-compliant at any point during the plan, the CMHC evaluator should report the non-compliance to the defense attorney. If the defense attorney is unable to elicit compliance, then a letter should be sent to the court.

12. The CMHC must immediately notify the court when the defendant becomes competent to stand trial. The CMHC shall maintain contact with the defendant until the time of trial or for two years from the date of the order (whichever is first).

13. If, after two years of service, the person has not made substantial progress towards attaining competence to stand trial, the CMHC shall assess the person's needs and may terminate the service plan and recommend to the court that the person be referred for other mental health service needs. The CMHC shall report its conclusion to the court before terminating services.

14. Copies of all communication(s) with the court must be copied to the forensic specialist in the Office of Special Services in TDMHDD. (T.C.A § 33-7-405)

15. The CMHC shall submit claims for reimbursement of these services within 45 days of the date that the service is provided. The required data report form, progress notes and any communication with the court must be submitted with the invoice.